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January 28, 2000

VIA FACSIMILE & FIRST CLASS MAIL

Ami Antoine, Esquire (3RC43)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

RE: 68th Street Dump Site

Dear Ms. Antoine:

This letter is in response to your January 27, 2000 correspondence. On January 21, 2000, we received a memo from Jennifer Chan indicating that EPA was planning on collecting samples from the site with no stated purpose or reason for such action. Our response, dated January 26, 2000, requested that EPA explain its reasons for wanting to collect further samples and a status of the proposed N.P.L. listing. Your response letter dated January 27, 2000 indicated that EPA is taking action to address unspecified concerns regarding the proposed N.P.L. listing. Ms. Chan did not respond to my questions and you have not responded to my letter of earlier today requesting that you identify the sampling EPA wants to conduct and the specific concerns to the proposed NPL listing alluded to in your letter. Nevertheless, you requested a response from me today.

First, you have incorrectly concluded that Pulaski and 68th Street, L.L.C. has refused or denied EPA access to its property. The only action we have taken is to request an explanation as to why EPA wants to re-visit the site at this time in light of the numerous inspections and investigations which have already been conducted. Despite your assertions to the contrary, Section 104(e) of CERCLA does not grant EPA an unlimited right of access to property for investigation purposes. Section 104 (e)

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Ami Antoine, Esquire
U.S. Environmental Protection Agency
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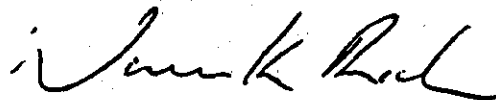
states that there must be a reasonable basis for the EPA to exercise its access authority. The cases construing Section 104 (e) put the burden on EPA to explain its reason as a precondition of the property owner's obligation to grant access. See United States v. Genzale Plating, Inc., 723 F. Supp. 877 (E.D.N.Y. 1989). Thus far, EPA has not articulated a reasonable basis for requesting access and re-sampling of the site.

Secondly, your explanation regarding the N.P.L. listing is not sufficient to establish a reasonable basis for re-visiting the site. The 68th Street Dump Site was proposed for N.P.L. listing well over one year ago. That proposed listing in January 1999 was supposed to be based upon scoring from data obtained prior to that date and not from samples collected one year later. Your letter indicates that EPA's request to re-visit the site is aimed only at supporting its proposed N.P.L. listing of the 68th Street Dump Site from one year ago. This subverts the N.P.L. listing process.

Lastly, your arbitrarily imposed deadline providing less than 24 hours for our response is unreasonable. EPA first contacted our client regarding the recent access request only seven days ago. Despite our prompt response and several letters requesting further information, you have given us less than one day to make a final decision. Additionally, your letter is not clear as to what decision you are requesting that we make. The January 21st memo from Ms. Chan indicated that a formal access agreement would be provided for the proposed March visit. Your letter appears to be demanding a final decision regarding the proposed visit during the first week in February and the March visit with absolutely no reference to a written access agreement. Certainly you do not expect my client to agree to EPA's request without an opportunity to review and negotiate the terms of the access agreement.

In summary, my client will not oppose access by EPA upon reasonable notice and after a reasonable basis for re-visiting the site is articulated. At that time, we will be more than willing to review and negotiate a satisfactory access agreement.

Yours very truly,



Warren K. Rich

WKR:mfg

cc: Kenneth R. Binnix

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FACSIMILE TRANSMITTAL

TO: Ami Antoine
U.S. EPA

FAX: (215) 814-2601

FROM: Warren K. Rich

FAX: (410) 267-5901

DATE: January 28, 2000

3 pages (including this cover sheet)

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RE: 68th Street Dump Site

Dear Ms. Antoine:

We will respond to your imposed deadline sometime later today. In the meantime, please identify the specific issues you alluded to in the first paragraph of your letter and identify the types of sampling you wish to conduct.

Yours very truly,



Warren K. Rich

WKR:rw

cc: Kenneth R. Binnix

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